



ENVIRONMENTAL REVIEW COMMISSION

November 13, 2013

Room 643 of the Legislative Office Building

The Environmental Review Commission (ERC or Commission) met on Wednesday, November 13, 2013 at 9:30 AM. The meeting was held in Room 643 of the Legislative Office Building. Senator Brent Jackson presided.

Members present were: Senator Brent Jackson, Chair; Representative Mike Hager, Chair; Representative Ruth Samuelson, Chair; Senator Austin M. Allran; Senator Stan Bingham; Senator Andrew Brock; Senator Bill Cook; Senator Fletcher L. Hartsell, Jr.; Senator Gene McLaurin; Senator Ronald Rabin; Senator Michael P. Walters; Representative William D. Brisson; Representative Jimmy Dixon; Representative Pricey Harrison; Representative Chuck McGrady and Representative Chris Millis. Also present were the following: Dr. Jeff Warren, Senate Senior Policy Advisor; Mr. Andy Munn, House Senior Policy Advisor; Mr. Jeff Hudson, Commission Counsel; Ms. Jennifer McGinnis, Commission Counsel; Mr. Jeff Cherry, Commission Counsel; Mrs. Jennifer Mundt, Commission Analyst; Mrs. Mariah Matheson, Research Assistant; Ms. Tori Bragg, Ms. Lindsey Dowling, and Mr. Towers Mingledorff, Commission Clerks; and Sergeants-At-Arms Mr. Garland Shepherd, Mr. Larry Elliott, Mr. Ashley Mickens, Mr. Ed Kesler and Mr. Billy Fritscher.

Senator Brent Jackson convened the meeting at 9:35 AM and welcomed the attendees. He asked the other ERC co-chairs if they had any comments or announcements. Representative Ruth Samuelson thanked the attendees and offered donuts to the members.

Senator Jackson welcomed the Sergeants-At-Arms and Commission staff and invited Mr. Richard Whisnant, Gladys Coates Professor of Public Law and Government, School of Government (SOG), University of North Carolina at Chapel Hill (UNC-CH), to the podium to give his background presentation on the statutory models for establishing, operating and financing certain organizations that provide water and sewer services in the State.

Mr. Whisnant thanked the members in attendance and offered to sit down with any legislator to walk through issues of concern. He gave an overview of North Carolina water service providers. Mr. Whisnant described the federal and the State view of classifying "public water systems," which can be either publicly or privately governed. The federal view is based on size (customers or connections), permanence of users (transient or non-transient) and source of water (surface, ground, or purchase).

Mr. Whisnant explained that as a fully delegated State under the Safe Drinking Water Act, North Carolina also has laws that use this view. With regard to the State view, North Carolina classifies its water systems by form of governance, such as: city/county, interlocal agreement, joint management agency, county service district, sanitary district, water and sewer authority, metropolitan water district, metropolitan sewerage district and county water and sewer district.

Mr. Whisnant also discussed the powers, regulation and review of water service providers. He told the members that powers (such as taxing, condemnation, police powers, required hookups) vary considerably and privately-governed entities are regulated by the Utilities Commission; other systems may be regulated by the Department of Environment and Natural Resources (DENR) (historically also the Department of Health and Human Services (DHHS) and the U.S. Environmental Protection Agency (U.S. EPA)), the Local Government Commission (LGC), and local governing boards. Public enterprise systems are among the most important local government function and operators are also licensed and regulated by special licensing boards. Furthermore, policies of capital funding entities also regulate water system behavior and sources of information from review of systems, including engineering and trade associations, such as the State Water Infrastructure Commission (SWIC), the State Water Infrastructure Authority (SWIA) and UNC-CH SOG/Environmental Finance Center (EFC).

Senator Jackson thanked Mr. Whisnant for his presentation and asked the members if there were any questions.

Rep. Samuelson asked if the three bullet points (page five of the PowerPoint presentation) below pertain to public or private entities:

- Operators also licensed and regulated by special licensing boards.
- Policies of capital funding entities also regulate water system behavior.
- Sources of info from review of systems include engineering and trade associations, SWIC/SWIA, UNC SOG/EFC.

Mr. Whisnant said that they apply to both. Historically they have not been borrowing money from the State. They are making decisions as a private business. The Utilities Commission would be the best source of information.

Rep. Harrison was concerned about the quality and pricing of one of the larger privately owned systems. She asked if there is a complaint, who should it go to?

Mr. Whisnant answered that the first step is to go to the Utilities Commission. They collect all of the rate information into databases and can give you a good comparison.

Sen. Bingham wanted to know if Mr. Whisnant was familiar with requirements for audits and repayment for a particular sanitary district?

Mr. Whisnant said that they are subject to audit requirements under the Local Government Act. Similar to a Soil and Water Conservation District, they may be able to do an audit outside of the governmental system.

Senator Jackson thanked Mr. Whisnant for his time and answers and invited Mr. Shadi Eskaf, Senior Project Director, UNC SOG/EFC, to give his presentation on the background of the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State.

Mr. Eskaf thanked Senator Jackson and continued Mr. Whisnant's presentation. Mr. Eskaf began by describing the public water systems in North Carolina (as of October 2012): community water systems make up 2,070 units; non-transient non-community water systems make up 396 units; and transient non-community water systems make up 3,556 units.

Mr. Eskaf spoke about the community water systems in North Carolina and explained who is in charge of these systems. Local governments are responsible for the following systems: municipality (large and small), municipality serving regionally, county, county districts, the authority, sanitary district, and Metropolitan Water/Sewerage District. The private sector is responsible for the following systems: not-for-profit associations, resorts, large and private corporations (Aqua NC and Utilities Inc.), smaller multi-system water companies (Corriher Water System, Scientific Water and Sewage, A&D Water Service, etc.), mobile home parks (MHP), Homeowners Association (HOA) and independent private owners. Independent systems are those owned by North Carolina and the federal government (military bases).

Mr. Eskaf broke down the 2,070 active community water systems in North Carolina by owner type: 29% are small, private systems not owned by a water organization; 27% are owned by a local government; 4% are private systems owned by a single-system water organization; 2% are private systems owned by one of four multi-system water companies; and zero are owned by the State or federal government. Mr. Eskaf reiterated that 27% of the active community water systems were owned by local governments and 73% was owned by private entities.

Mr. Eskaf provided the percentages of population served by these active community water systems: 87% of the population is served by a system owned by a local government; 11% are served by a private system owned by a single-system water organization; 3% are served by systems owned by AquaNC or Utilities Inc.; 2% are served by systems owned by the State or federal government; 1% are served by small, private systems not owned by a water organization; and zero are served by a private system owned by one of four multi-system water companies.

Mr. Eskaf named the community water systems owned by multi-system water companies: A & D Water Service Inc., Aqua North Carolina Inc., Carolina Water Service of NC Inc., Corriher Water Service Inc., Fox Run Water Service Company Inc., and Scientific Water and Sewage. In addition, there are community water systems owned by MHPs, apartment complexes, HOAs, and individuals. If a utility is owned by a local government, it falls into one of several types: authority, metropolitan water/sewer district, county/district, sanitary district, or municipality.

Mr. Eskaf gave examples of new regional utilities in recent years: Lower Cape Fear Water and Sewer Authority (LCFWSA) (wholesale) – 2003, Lee County (Sanford acquired) – 2005, Neuse Neuse Regional Water & Sewer Authority (RWSA) (wholesale) – 2008, Cape Fear Public Utility Authority (CFPUA) (Wilmington and New Hanover County) – 2008, YVSA – 2009, Piedmont Triad Regional Water Authority (RWA) (wholesale) – 2010, Two Rivers Utilities (Gastonia &

Cramerton) – 2011, and Martin County Rural Water and Sewer Authority (MCRWSA) (wholesale) – 2013. Mr. Eskaf explained the differences found in “regional” municipality and county water systems: a municipality that is more like a regional utility but is owned by the town; a municipality that provides retail service to other municipalities, but exists mainly to serve the municipality’s residents; a municipality, serving the town’s residents and some customers nearby, unincorporated areas’ county system that also serves residents in some of the incorporated areas of the county; a county system that serves residents in all unincorporated areas of the county; and a county system that serves residents in specific unincorporated areas of the county.

Mr. Eskaf spoke about the numbers regarding water system interconnections, stating that 30% of community water systems (CWS) have an interconnection with another system, 26% can buy water from another system, and 11% have interconnections to buy water in case of emergency. There are two ownership types with this type of system: private and government.

Mr. Eskaf finished his presentation by discussing what water and wastewater rates cover: 11% of operating revenues are used for operating expenditures; 19% of operating revenues are used for operating expenditures, principal and interest on long-term debt; and 71% of operating revenues are used for operating expenditures, principal and interest on long-term debt. Mr. Eskaf also discussed future capital needs for utilities: more than \$10.0 billion in 20 years for water systems, more than \$6.6 billion in 20 years for wastewater systems, and \$8.1 billion by the end of 2012 for existing water and wastewater debt among local government utilities.

Senator Jackson thanked Mr. Eskaf for his presentation and asked the members if there were any questions.

Rep. Hager asked about Cliffside Sanitary Sewer District, which previously served a town and textile mills. Currently, there are only a few customers and a school. How prevalent is that in North Carolina?

Mr. Eskaf responded that they have seen towns where the vast numbers of customers were commercial. When the commercial customers go away, the utilities try to interconnect to other systems and sell to other towns. Regional utilities are becoming more popular so it's more properly sized and they can lower their costs.

Rep. Hager asked who regulates trailer park water systems?

Mr. Eskaf said that DENR regulates the water quality of trailer park systems. The Utilities Commission only regulates privately owned systems that make a profit on water.

Rep. Hager asked if there is a minimum number of customers that require regulation?

Mr. Eskaf said that as long as they are a public water utility (serving 15 people or more), then DENR regulates water quality. If they are smaller than that then he's unsure.

Rep. Hager responded that there may be a gap that needs to be reviewed.

Rep. Samuelson asked about the impact on a system when it loses a big customer? Is there an issue of decreased demand versus those who are not willing to charge enough?

Mr. Eskaf answered that it's a combination of factors. It's not one or the other. Local governments are active in raising rates. There are only a handful that have not. It's those 5% that don't raise rates for many years that may have problems. In other cases it's because of customers leaving. A lot of it is changing demands. Residential customers are using less water, so utilities have to raise rates to make up the difference.

Rep. Samuelson asked if there is any correlation between the type of systems and their profitability? Are the water systems responsibly meeting their expenditures?

Mr. Eskaf responded that the regional utilities are the largest. It's the small systems that have the gap between the revenues.

Rep. Samuelson asked about debt slide. State funded agencies were awarded less than \$170 million in funds. How much, if any, went to systems that weren't running very well versus systems who needed to increase demand?

Mr. Eskaf answered that the number came from reports from the State Water Revolving Fund, Rural Center Economic Development Center (Rural Center), and Department of Commerce. The reports did not analyze that. These agencies are very particular that the utility show there is a financial need (to raise rates beforehand).

Sen. Rabin asked if this is the most cost-effective way to deliver potable water and deliver safe treatment?

Mr. Eskaf answered that there is a lot of collaboration. Utilities are sharing resources. Compared to other states, North Carolina has a similar situation. The State has smaller utilities per capita. The cost-effectiveness of working together can lower net costs per customer. Having one utility serving the entire State would be less cost effective.

Sen. Rabin asked who's in charge of North Carolina's water system? Are we over regulating or under regulating? What should we fix?

Mr. Eskaf said that the people who are in charge of these systems are able to do their job and do it correctly. There is a lot of miseducation. They provide the resources available for these systems to work together.

Rep. Harrison asked if there is some comparability between privately operating water systems versus public?

Mr. Eskaf responded that Aqua NC is not excessive, but it is on the higher end.

Sen. Hartsell asked if we have any data that relates those systems from sub-basin by sub-basin, with projections for needs for further expenditures? He then added that county lines don't mean anything with regard to water and sewer.

Mr. Eskaf said on the need side, the \$10 billion comes from the drinking water survey and they don't do an analysis of every water system. They have the large water systems and a sample of 50 to 60 small systems. The U.S. EPA extrapolates for the needs of the entire State. It's hard to break it up by sub-basin.

Sen. Hartsell said if we could break it down where the funds went, then we could break it down by sub-basin.

Sen. Bingham asked if we could get a brief overview or an audit of where the \$172 million funding is used? And a status report of how they're doing?

Mr. Eskaf told Sen. Bingham to look at the Rural Center report.

Rep. Millis asked Mr. Eskaf to give a perspective on what the cost would be on individuals? And the costs of operations and maintenance? Is there data on the dollar amount of the infrastructure now and how does that play into the future number that we have to repair or alter?

Mr. Eskaf responded that they can guess using the LGC's data. It's not an evaluation. The U.S. EPA report also has a number.

Senator Jackson thanked Mr. Eskaf for his time and answers and invited Mr. Tracy Davis, Director, Division of Energy, Minerals, and Land Resources (DEMLR), DENR, to give his presentation on the State's stormwater programs, including the annual report on implementation of stormwater runoff rules and programs.

Mr. Davis gave a quick summary on transferring the Stormwater Permitting Program from the former Division of Water Quality (DWR) to DEMLR; a general overview of the different stormwater programs; an update on legislative change to Built-Upon Area and associated definition of gravel as pervious; and highlights from the October 1, 2013 Annual Stormwater Program Report.

Regarding the transfer of the Stormwater Permitting Program, Mr. Davis told the Commission that effective August 1, 2013, the former Division of Water Quality's (DWQ) Stormwater Permitting Unit was transferred from DWR to DEMLR at the Secretary's direction. The Stormwater Permitting Program is housed in DEMLR's Land Quality Section (LQS) alongside the Erosion and Sedimentation Control Program, Safe Dams Program, and Mining Program. The reasons for the transfer of DWQ's Stormwater Program to DEMLR Land Quality Section were to improve efficiency and effectiveness during the permitting and compliance processes in light of similar regulatory focuses. This transfer hopes to eliminate conflicting recommendations from two separate divisions and become more efficient and timely with permit review, comment, and issuance. Furthermore, the transfer will allow for flexibility in reviewing and approving designs not prescribed in guidance manuals and avoid overdesign of measures.

Mr. Davis continued to discuss the transfer, adding that the move will enable one cross-trained inspector to handle compliance issues for both construction stormwater and erosion and sedimentation control, mining stormwater general permit, and mining permit. While construction and mining related consolidation offers the timeliest opportunities for efficiency, the LQS is evaluating efficiency improvements between other related program areas. Currently “service” improvements are already being realized by customers. The initial transfer (Effective August 1, 2013) saved the State 30 Stormwater Program positions (appropriated and receipt based): Nine Raleigh Central Office positions and 21 Regional Office positions.

Mr. Davis spoke about the August 8, 2013 DEMLR statewide videoconference where the DENR Mission and DEMLR goals and culture were discussed. The call included the organizational structure and initial transition activities. As of this meeting, DENR is delegating authority from DWR to DEMLR for stormwater program implementation, initial on the job cross training, formalized cross training for regional staff, the technical bulletin, the Sedimentation/Construction Stormwater Inspection Report, the inspection and monitoring records for activities under Stormwater General Permit NCG010000 and self-inspection records for land disturbing activities per [G.S. 113A-54.1](#), and the new electronic plan submittal and approval process.

Mr. Davis stated that this move was all possible because of a statewide LQS staff meeting held on September 25, 2013 in Raleigh to ensure consistent message and program implementation regarding the following areas: updates on DEMLR reorganization and culture and LQS programs; detailed discussion on stormwater programs; permitting and compliance activities; DEMLR’s role in delegated local program implementation; and recordkeeping and database management systems. More detailed consistency training is planned for regional offices via eastern and western regional sessions.

Mr. Davis discussed why stormwater management is required. Stormwater runoff is a key source of water pollution in North Carolina and the U.S., as it carries all types of pollutants to waterways. DENR implements these management practices through the Federal Clean Water Act of 1972, the State Statutes, Administrative Code, and local ordinances and programs.

Mr. Davis gave an overview of stormwater programs, including the federal National Pollutant Discharge Elimination System (NPDES) Stormwater Program areas: industrial stormwater activities, construction stormwater activities; and Municipal Separate Storm Sewer System (MS4) entities. Mr. Davis gave an overview of the State Stormwater Program areas: coastal stormwater management, water supply watershed protection, high quality waters and outstanding resource waters, post-construction stormwater (Phase II areas), and other areas. Mr. Davis spoke further about the federal NPDES, which is a program the State was delegated to implement in 1975.

Mr. Davis discussed the Stormwater Phase I–1990 and Phase II–2000 and the activities covered: Industrial – 10 categories of facilities, Construction – one acre disturbed; and Municipal – urbanized areas. Mr. Davis spoke about the U.S. EPA rule making and their post-construction and electronic reporting. Mr. Davis stated that the State’s Stormwater Program Areas Post-

Construction Stormwater Control currently applies to approximately 65% of the State. This program minimized Built-Up Area or imperviousness and created passive stormwater management and engineered controls where necessary. These post-construction stormwater management programs are required in 65% of the State.

Mr. Davis gave the Commission an update on [House Bill 74](#) (Regulatory Reform Act of 2013) and changes to Built-Up Area and the definition of gravel. HB 74 defines “gravel” as a pervious surface. DENR and the Environmental Management Commission (EMC) may develop a temporary rule to further clarify the definition of “gravel”. Designers are advised to use caution in the interim in designing erosion and sediment control and stormwater/post construction measures using gravel area as a pervious surface. In reality, the runoff from compacted gravel will result in higher velocities and volumes. Measurements may be undersized, overtopped, or bypassed resulting in water quality violations.

Mr. Davis finished his presentation with highlights of the 2013 Annual Stormwater Program Report, including integration with other DEMLR regulatory programs, technical review workgroups, program efficiency measures, electronic renewal for general permits, implementation of new permit transfer procedures for bankrupt projects, a draft of stormwater rules for oil and gas development, and outreach and education efforts.

Senator Jackson thanked Mr. Davis for his presentation and asked the members if there were any questions.

Rep. Millis asked for the reason for the transfer, as he was not aware of any hiccups. Is one of the reasons for the transfer, flexibility? Please elaborate.

Mr. Davis said that the stormwater staff's previous policy was if it wasn't in the manual then you couldn't consider it. We wanted to make sure that we were flexible and able to look outside of the box.

Rep. Millis responded that under the current structure, the Best Management Practices (BMP) manual is the law. If you don't meet the BMP manual there is zero flexibility. A lot of the reasons for [House Bill 480](#) (Environmental Permitting Reform) was that it was not a guidance document, but more so policy.

Mr. Davis responded that they are looking at developments. If there is a way to keep natural areas in the footprint rather than to carve out stormwater protection then it would be good for environmental protection and a cost savings. We are trying to increase ways in which designs can have pockets of natural areas.

Rep. Millis stated that runoff leaving a site is a two-way quality measure. It's important for DENR to provide a choice between high density and low density, to be cost effective. It shouldn't be about density. It should be about water quality and water quality alone.

Rep. Samuelson asked about the Built-Up Area and gravel. Do you have a sense on when DENR will clarify the definition?

Mr. Davis stated that it will go before the EMC in December.

Rep. Samuelson asked to be kept informed because we may wish to work with you. Whoever the group is, let us know, because we may want them to present to the ERC.

Rep. Samuelson made mention of the ERC working groups. Part of our working group is dealing with general rules and changes to stormwater. With all of the mergers, we have to look at this in 2015.

Mr. Davis responded that they may want to add something for the coastal plain stormwater low impact development.

Sen. Bingham asked about the placard on coastal waters notifying people on closures. In the Piedmont there's an area where the toxicity of the fish exceeds edible levels. No placards have been put in that area to indicate that it's a safety hazard. Who does this?

Mr. Davis responded that it is handled by Tom Reeder in DWR.

Sen. Cook asked about flooding in the town of Belhaven. Stormwater drain off doesn't happen as quickly as it should. Are you aware of this problem? Do you have any programs to help towns that have this problem?

Mr. Davis responded that they can look into a local program control.

Sen. Rabin asked about stormwater rules for oil and gas development, and if it's in coordination with the Mining and Energy Commission (MEC)?

Mr. Davis responded "yes".

Senator Jackson thanked Mr. Davis for his time and answers and invited Mr. Mitch Gillespie, Assistant Secretary, Department of Environment and Natural Resources to give his presentation on DENR's activities related to development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and use of horizontal drilling and hydraulic fracturing for that purpose.

Mr. Gillespie started with an update on energy issues, including a merger of the State Energy Office with DENR, new hires for the Energy Program in DEMLR, consideration of expenditures of 2013 appropriations, and findings and recommendations of DENR regarding compulsory pooling. Mr. Gillespie explained the makeup of the State Energy Office as of July 2013 and the State Energy Office within DENR currently.

Mr. Gillespie discussed the current hires in the energy program: Energy Program Supervisor: supervises staff working on rule development and supporting the MEC; Senior Specialist: develops draft rule language and supports committees of the MEC, and will provide permit review and enforcement in the future; Geologist: develops draft rule language and supports

committees of the MEC, and will provide permit review and enforcement in the future; Administrative Assistant: provides administrative support to both the energy program and to the members of the MEC. Mr. Gillespie presented information regarding future hires in the energy program; Deputy Director: will assist the Division Director in this newly expanded department (will replace Director of the State Energy Office); Rules Coordinator: assures that the MEC addresses all necessary rules and manages the process of taking rules out for public comment and review by the Rules Review Commission (RRC); Section Chief: manages the staff supporting the MEC; and the Engineer: develops draft rule language and supports committees of the MEC, focuses on engineering requirements such as pit and tank standards and will provide enforcement in the future. Furthermore, Mr. Gillespie spoke about the unfunded but needed positions: Strategic Planning Manager for Energy: this position is needed to promote the Governor's energy policy across the state; Public Information Officer (PIO): DEMLR is the only division in DENR that lacks a PIO. DEMLR is now highly visible and interacts frequently with the public and the media. A PIO would reduce the burden on other Energy Staff to handle these activities, thereby freeing staff to focus on rule writing and enforcement; Renewable Energy Specialist: needed to work on wind permitting and other renewable energy topics; and an Office Assistant 4: needed to provide office support to this section that now has 30 additional staff members.

Mr. Gillespie presented information on the energy sector, starting with potential expenditures of 2013 appropriations regarding the energy sector. He then defined compulsory pooling: the joining together of parcels of land to have sufficient acreage to form a drilling unit under well spacing regulations. Mr. Gillespie spoke about how the North Carolina Oil and Gas Conservation Act authorizes the use of integration or compulsory pooling to prevent waste and to avoid the drilling of unnecessary wells ([G.S. 113-393](#)). He told the Commission that other states require a percentage of minimum voluntary agreement based on surface acreage before an operator can make an application for a pooling order.

Mr. Gillespie discussed what compulsory pooling is: percentage of voluntary minimum agreement and that additional information will help inform North Carolina about the size of drilling units, spacing requirements and setbacks. This information is not yet available from the MEC. He used examples in other states: Virginia requires 25% agreement; Arkansas requires 50% agreement for exploratory wells only; Tennessee and Kentucky require more than 50% agreement; Ohio has guidelines of the regulatory agency requiring 90% agreement (not in statute or regulation); and many states have no requirement for voluntary agreement before making a pooling application.

Mr. Gillespie described North Carolina's compulsory pooling and cost sharing as a "free ride approach." The compelled owner is carried for his share of expenses while the well is being drilled. If the well is successful, the owner is only responsible for his share of the costs of production. He mentioned that DENR needs additional information from the MEC in order to make decisions on recommendations regarding compulsory pooling, including: the size of drilling units and rules on setbacks.

Senator Jackson thanked Mr. Gillespie for his presentation and asked the members if there were any questions.

Rep. Harrison asked if there were potential shale resources in the Camden/Pasquotank area?

Secretary Gillespie said the budget directed us to do additional research in the Albemarle area. It's been identified as a shale basin. It's a shallow basin. We can dig down to that level for low cost and take some samples.

Sen. Bingham stated that there are a lot of rumors and conflicting information about dump sites and the number of wells. There are thousands of wells that would be near this toxic waste.

Secretary Gillespie said that there are 32,000 wells that will be fracked for a total of \$500 million. There has not been one case of confirmed groundwater contamination from the fracking process. However, there are lots of claims of contamination, but I'm not sure if it's been proven.

Rep. Harrison stated that Dr. Jackson from Duke University said that there has been contamination. If we don't have disclosure of the fracking fluid we can't tie it to the fracking process.

Secretary Gillespie responded that both of those points would be debatable.

Sen. Cook stated that this is a gift from God for North Carolina and it will do wonders for our economy. There's an awful lot of misinformation. Is there any program that DENR has that will help to counter the misinformation?

Secretary Gillespie reiterated that nobody wants to have a polluted North Carolina and no one wants it to allow destructive practices.

Sen. McLaurin stated that \$6,700 was budgeted for testing in certain areas of the State. That sounds like a minimal amount of money.

Secretary Gillespie said if you look in Western North Carolina there's a possible basin. We're going to go through the highways and road cuts to see what the rocks look like.

Rep. Hager addressed Sen. Bingham's question. We have gone away from and are not considering the issue of reinjection. We have to look at the folks who are actually making these rules.

Senator Jackson thanked Mr. Gillespie for his time and answers and invited Mr. James Womack, Chairman, Mining and Energy Commission (MEC), to give his presentation on the activity of the MEC concerning the rule development process for the management of oil and gas exploration and development activities in the State, and use of fracking for that purpose.

Mr. Womack discussed [Senate Bill 820](#) (S.L. 2012-143, Clean Energy & Economic Security Act) and the topics it included: establishes the Mining & Energy Commission, requires a modern regulatory program for oil and gas development, authorizes horizontal drilling and hydraulic fracturing, enhances landowner and public protections, and establishes the Joint Legislative Commission on Energy Policy. Mr. Womack also discussed [Senate Bill 76](#) (S.L. 2013-365,

Domestic Energy Jobs Act) and the topics it included: streamlines the regulatory process by waiving fiscal notes, mandates legislative review of rules before commencement of drilling, requires special study of coordinated permitting, requires special study of landmen registration and taxation of hydrocarbons, and establishes the Energy Policy Council.

Mr. Womack told the Commission about the MEC accomplishments, including: MEC was constituted by Statute on August 1, 2012; MEC members were sworn in at the first meeting on September 6, 2012; by-laws adopted and committees assigned on November 2, 2012; staff research and presentations began on December 18, 2012; DENR support staff hiring completed in January 2013; study groups began meeting on February 8, 2013; first rules passed by MEC on May 3, 2013; study group work completed by September 25, 2013; and the study group reports transmitted by September 27, 2013.

Mr. Womack addressed the MEC's Proposed Future Milestones: statutory change requests to the North Carolina General Assembly (NCGA) due on January 14, 2014; subsequent study group reports due in March or April of 2014; completion of MEC internal rule-writing due on September 5, 2014; public comment period due in September or October of 2014; MEC adoption of rule-set due on November 15, 2014; MEC turnover of adopted rules to RRC due on November 20, 2014; and the RRC consideration of rules due on December 15, 2014.

Mr. Womack discussed the anticipated development milestones: 2-D and 3-D seismic studies due in November or December of 2013; analysis and drill plan development expected by January or February of 2014; vertical well and core drilling expected by the Spring or Summer of 2014; NCGA "green light" for permitting expected by March 1, 2015; first horizontal wells permitted by April 2015; five wells completed by 2015; fifteen wells completed by 2016; 55 wells completed by 2017; and 140 wells completed by 2018.

Mr. Womack gave an update on the Administration of Oil and Gas Operations Committee: 70 rules assigned; 22 rules in research; nine rules moved out of committee; and six rules approved by full MEC. Mr. Womack listed the target dates for rules completion: well development rules are due by November 22, 2013; site development rules are due by December 6, 2013; coordinated permitting rules are due by January 31, 2014; unitization and pooling is expected by March 17, 2014; bonding rules are due by June 6, 2014; and production rules are due by July 25, 2014. Mr. Womack also spoke about oil and gas well sites and well casing and cementing. He also presented rule-writing challenges: forming drilling areas and units, compulsory pooling and appeals, rules on mineral rights leasing, applying statutory language on allowables, and applying statutory language on oil and gas ratios.

Mr. Womack gave an update on the Water and Waste Management Committee: 23 rules assigned; 12 rules in research; seven rules moved out of committee; seven rules approved by full MEC. He also discussed target dates for rules completion: water management rules are due by February 18, 2014 and waste management rules are due by April 4, 2014. Mr. Womack further discussed water withdrawal and impoundments, Class II injection wells versus water re-use, disposal of drilling wastes at municipal facilities and pre-treatment and discharge of flow-back water.

Mr. Womack gave an update on the Environmental Standards Committee: 25 rules assigned; 17 rules in research; seven rules moved out of committee; one rule approved by full MEC. He also discussed target dates for rules completion: chemical disclosure rules are expected by November 22, 2013; environmental testing rules are due by January 14, 2014; and the aesthetics and nuisance rules are expected by May 2, 2014. Mr. Womack discussed Environmental Standards Committee rule-writing challenges on hazardous chemical disclosures, frequency and scope of water testing, statutory distance from wellhead for water well testing, use of tracer agents and canary testing, and setbacks based on health and safety imperatives.

Mr. Womack gave an update on the Rules Committee: 13 rules assigned; nine rules in research; and internal rules moved out of committee. He also discussed internal rules approved by full MEC: 26 other committee rules processed to full MEC. Mr. Womack gave target dates for rules completion: administration and safety rules expected by August 8, 2014 and the final rule-set for public comment due by September 5, 2014. Mr. Womack discussed the Rules Committee rule-writing challenges with statutory authority for variances and waivers, potential “bottleneck” in Rules Committee by Summer 2014, preparation of administrative and safety rules, and early and frequent interaction with RRC.

Senator Jackson thanked Mr. Womack for his presentation and invited Dr. Ray Covington, Vice Chairman, MEC, to give his presentations on the issue of integration of compulsory pooling and other states’ laws on the matter and the appropriate funding and potential sources for that funding deemed necessary in connection with management of oil and gas exploration and development activities in the State.

Dr. Covington discussed the Compulsory Pooling Study Group. The scope included statutory review, rules in other states, surface use agreements, severed estates, pooling, and unitization. Participants included Rural Advancement Foundation International-USA (RAFI), NC Conservation Network, North Carolina State University (NC SU), the Department of Commerce, the Department of Agriculture and Consumer Services, State Employees Credit Union, NC Real Estate Commission, Attorney General's Office, local jurisdictions, and the Humphrey Law Firm. The recommendations were as follows: mineral rights clarifications needed (NCGA action), compulsory pooling of subsurface areas only, surface use agreements required, 90% secured lease rule, landowner protections, cost sharing, and risk penalty provisions.

Dr. Covington discussed the Funding Levels and Potential Funding Sources Study Group. The scope required the team to estimate the costs for the regulatory program and industry impacts then identify potential sources to address those costs. Study efforts included examination of other states’ costs, fees and taxes; break-down of our expected costs into local and State-level categories; development of objective methods for cost recovery; and developing scenarios to help establish levels for taxes and fees. Participants included DENR, the Department of Transportation, NC Highway Patrol, NC League of Municipalities, NC Association of County Commissioners, and the Department of Commerce. The recommendations are as follows: severance tax for State-level cost recovery, impact fees and trust fund for local cost recovery, ad valorem taxation, bonds, and maintenance agreements for municipal roads.

Dr. Covington spoke on behalf of Dr. Kenneth Taylor, State Geologist, Ex Officio Member, MEC. He was unable to make the meeting and Dr. Covington spoke about Dr. Taylor's contributions to the new and revised MEC.

Dr. Covington finished by discussing the Coordinated Permitting Study Group. The scope is to develop the methods and procedures for a single comprehensive environmental permit for oil and gas exploration and development. Efforts include examination of the best practices for streamlined, comprehensive, electronic permitting among the other states and formal participation from all DENR divisions. Dr. Covington discussed the emerging findings and recommendations: several states have refined digital application and permitting processes we can borrow heavily from, DENR can readily adapt the DEMLR process already used for coordinated mining permits, final report to the NCGA is due in December 2013, and interim recommendations to the Administration of Oil & Gas Committee of the MEC for rule-writing purposes.

Senator Jackson pointed out to the members that Dr. Covington covered Dr. Taylor's agenda item and thanked Dr. Covington for his presentation. Sen. Jackson invited Mr. Charles Taylor, Director, MEC, to give his presentation on local government regulation of oil and gas exploration and development activities, and the use of fracking for that purpose.

Mr. Taylor briefly presented the Local Government Study Group. Scope required an examination of and recommendations for reasonable local regulations that do not prohibit oil and gas development. Participants included local jurisdictions, NC League of Municipalities, NC Association of County Commissioners, UNC-CH SOG, John Locke Foundation, Morningstar Law, and Impact Properties Group. Mr. Taylor discussed the recommendations: setbacks, noise, light, odor (nuisance) enforcement, emergency preparedness, zoning, infrastructure impacts and reimbursements, chemical disclosure, and bonding.

Senator Jackson thanked Mr. Taylor for his presentation and asked the members if there were any questions for Mr. Womack, Dr. Covington, or Mr. Taylor.

Rep. Harrison stated that she understands the delicate balance of public interest versus private. With regard to the core samples referenced that the industry is responsible for, how is that determined?

Mr. Womack answered that the procedure is for landmen to knock on doors and make arrangements to come in and survey the land that owners may have under contract. They can engage in use agreement for a vertical well. They will be allowed to go down as deep as they like and remove core samples from the ground. There will be compensation to the landowner unless the landowner wants to partner. It will be done by first come, first serve basis and agreements with landowners.

Rep. Harrison asked how the municipalities are treated. Pittsburgh had a problem with that and they had to issue water bottles because their treatment plants were not equipped.

Mr. Womack answered that Pennsylvania didn't have rules in place before they drilled. South Western Pennsylvania is showing us a water recycling program. We will pre-treat all water before it goes to any water treatment facility. We would rather the water be collected, treated, and reused for well activities through NPDES permitting.

Mr. Taylor said that if it met the industrial standard, we could identify local communities regarding the water and return.

Rep. Harrison asked about baseline testing. There was controversy of DENR turning down a grant. I believe that there has been contamination.

Mr. Womack responded that no other state has had a chance to baseline every aspect of their status quo. That includes the seismic, water, and socio-economic baseline. We are capturing a screen cap in time and industry has to pay for all prerequisite baseline testing.

Rep. Harrison stated that it's not clear if our current statutes provide for forced pooling.

Dr. Covington said that the statutes allow for a compulsory pool program, but there's no meat to those regulations. The easiest thing is to do nothing. We will continue to have compulsory pooling laws on the books. The MEC will put rules together to give guidelines.

Rep. Harrison stated that there needs to be a threshold for landowner protection. With regard to the local government funding piece, are we trying to allow for local governments to enact ordinances to protect communities and allow impact fees? Yet, the local governments cannot preempt fracking?

Mr. Taylor responded that five or six communities banned fracking. The legislature trumps that. Since then, Anson County has recently passed something. In Lee County, most of the activity has taken place outside of the municipality.

Mr. Womack said that they want to give the locals as much authority as they can, short of allowing them to prohibit fracking. We allow for zoning Unified Development Ordinance (UDO) activities, but they can't zone out drilling activities.

Ms. McGinnis stated that the NCGA directed the MEC to formulate a unified system statewide, but they cannot prohibit fracking in any area.

Rep. Harrison asked if they wouldn't be able to zone out drilling in sensitive areas?

Mr. Womack responded that we are debating setbacks because there may be setbacks to prohibit fracking. In super urban areas you have naturally occurring setbacks.

Sen. Rabin stated that given the volatility of the issues, Mr. Womack has done a good job. Those who are against the idea will soon want to be on board.

Sen. Bingham stated that his daughter is moving to Sanford and is opening wind solutions. They are in the process of buying property, and there were some mineral rights. Would that be something to consider even on a small tract?

Dr. Covington responded that Dr. Baskus with the County Geographical Information Systems (GIS) has researched every tract of land and whether or not they have severed mineral rights. On the website there is a spot you can click to see if the mineral rights have been severed. Whether it's a large tract of land or small. Many of them have been severed in the 1920s. There are individuals who do not know that they own mineral rights.

Sen. Bingham asked if it would be worth trying to get mineral rights back?

Mr. Womack said it's difficult to say what any one parcel would be worth. We have areas of highest payoff. If you're buying land outside of that circumference, the odds of having extensive oil and gas reserves are significantly reduced.

Sen. Jackson asked the members if there were any further questions and let the members know that the December meeting was canceled. He reminded the working group leaders to please work on their responsibilities and notified leaders that staff would be following up with them in December. Sen. Jackson ended the meeting by asking the other co-chairs if they had anything to discuss and thanked staff for their help and contributions.

There being no further business, the meeting adjourned at 12:41 PM.

Senator Brent Jackson, Presiding Chair

Towers Mingledorff, Commission Clerk